

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

LETTERS PATENT APPEAL No 47 of 1986

in

SPECIAL CIVIL APPLICATION No 4374 of 1985

For Approval and Signature:

Hon'ble MR.JUSTICE B.C.PATEL and

MR.JUSTICE C.K.BUCH

- =====
1. Whether Reporters of Local Papers may be allowed to see the judgements?
 2. To be referred to the Reporter or not?
 3. Whether Their Lordships wish to see the fair copy of the judgement?
 4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
 5. Whether it is to be circulated to the Civil Judge?

B U PATHAK

Versus

THE GUJARAT RESOURCES DEVELOPMENT CORPORATION LTD

Appearance:

MR BS PATEL for Appellants

M/S TRIVEDI & GUPTA for Respondent No. 1, 2

CORAM : MR.JUSTICE B.C.PATEL and

MR.JUSTICE C.K.BUCH

Date of decision: 07/12/98

ORAL JUDGEMENT (Per Patel, J.)

Unsuccessful petitioner (through Power of

Attorney) before the learned Single Judge in Special Civil Application No. 4374/86 which was disposed of by the learned Single Judge on 10.12.1985 has filed this L.P.A.

2. Facts as it emerges from the record are as under:-

2.1 The appellant was serving with Gujarat Water Resources Development Corporation Limited, Gandhinagar [hereinafter referred to as the Corporation] as Geohydrologist; He applied for granting Earned Leave w.e.f. 1.9.1984 to 30.10.1984 as he intended to proceed to USA; That application was not granted and he was informed accordingly. The appellant approached the respondent No.1 at Gandhinagar on 24.8.1984 and submitted another application for leave which was also not granted. The appellant then sent a declaration along with his letter dated 31.8.1984 to the effect that if he fails to resume duties after expiry of the period of leave that may be granted to him [1.9.1984 to 30.10.1984] he should be considered as having resigned from service of the respondent Corporation and the respondent Corporation may proceed further on that basis. Thus, the appellant, on his own, without permission and sanction of leave by the competent authority, went on leave and proceeded to U.S.A. It appears that as the appellant failed to join duties on 31.10.1984, considering his declaration that he should be treated as having resigned from service if he failed to resume duties on the expiry of the leave applied for, by an order passed by the Corporation on 30.11.1984, the services of the appellant came to be terminated with immediate effect. The petitioner addressed a letter to the Corporation on 9.1.1985 voicing his grievance against the said termination order.

3. On scrutiny, we find that the Special Civil Application was filed by the Power of Attorney holder of the appellant. The vakalatnama for the present appeal is also signed by the power of attorney holder of the appellant.

4. Mr. Patel, learned advocate contended that the order passed by the Corporation amounts to penalty as the same is the resultant effect of absence for a long period, and, therefore, the order is required to be quashed and set aside. He submitted that the procedure contemplated under the provisions contained in Article 311 of the Constitution having been not complied with, atleast the procedure which is required to be followed considering the principles of natural justice ought to

have been followed. He further submitted that inquiry could have been held against the appellant by the respondent Corporation and thereafter a decision could have been taken.

5. It is required to be noted that the appellant himself filed a declaration and submitted the same before the respondent Corporation that if he fails to resume duties on the expiry of the period of leave applied for, the declaration should be considered as his resignation from Corporation's service and the Corporation may proceed further as if he had resigned. There is nothing on the record to show that the appellant applied for extension of leave or that there was change of his mind to the effect that he does not want to leave the service of the Corporation before acceptance of resignation. Hence, the submission made by the learned advocate that the termination order amounts to penalty has no merit but in our opinion, the act of Corporation is only accepting resignation.

6. The Corporation did not initiate any action soon on the expiry of the leave applied for. The order of termination is passed by the Corporation almost after a month. This clearly indicates that the Corporation was not interested in terminating his service. It is also required to be noted that the Corporation has taken action only after the date mentioned by the appellant in his declaration. Another important aspect which is required to be noted is that even the Corporation has waited for a period of one month and thereafter the order has been passed. During this period, he could have applied for extension of leave. Thus the appellant remained absent right upto the date of the order i.e. 30.11.1984. If the Corporation was determined to terminate the services of the appellant, it could have passed an order on an earlier date, immediately after 01.09.1984. It is very clear that as the appellant in no uncertain terms informed the Corporation that if he fails to resume duties immediately on expiry of the period of leave, the declaration be considered as his resignation from service of the Corporation. To us, it appears that this is a declaration of clear intention of the appellant that he did not want to continue in the service of the Corporation after 30.10.1984 in case he fails to join on that date. The Corporation has taken the action only after that period. We are therefore of the view that the order under challenge is nothing but an order simpliciter terminating the services of the appellant in view of resignation tendered by the appellant and in view of the clear intention disclosed by the appellant himself that

he may not be continued in service of the Corporation on 30.10.1984 on his failure to report. In view of this, we would not like to interfere with the order passed by the learned single Judge. The appeal is dismissed.

csm./ -----